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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.
12

13 \$26,516.45 U.S. FUNDS,

14 Defendant.
15

VERIFIED COMPLAINT FOR
FORFEITURE *IN REM*

16 Plaintiff, United States of America, by its attorneys, William D. Hyslop, United
17 States Attorney for the Eastern District of Washington, and Brian M. Donovan,
18 Assistant United States Attorney, brings this complaint and alleges as follows in
19 accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:
20
21

22 **I. NATURE OF THE ACTION**

23 1. This is an action to forfeit and condemn to the use and benefit of the
24 United States of America the following listed property, hereafter the “Defendant
25 Property,” for violations of 18 U.S.C. § 1343, Wire Fraud, and 18 U.S.C. § 1344,
26 Bank Fraud.
27
28

VERIFIED COMPLAINT FOR FORFEITURE *IN REM* 1

1 **II. THE DEFENDANT(S) IN REM**

2 2. The Defendant Property consists of the following property:

3 \$26,516.45 U.S. funds from the sale of 200 Viewmont Dr. SE,
4 Moses Lake, WA, held in escrow by Stewart Title Company in
5 Stewart Trust, Escrow File #:801297

6 **III. JURISDICTION AND VENUE**

7 3. Plaintiff brings this action *in rem* in its own right to forfeit and condemn
8 the Defendant Property. This Court has jurisdiction over an action commenced by the
9 United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28
10 U.S.C. § 1355(a).

11 4. This Court has *in rem* jurisdiction over the Defendant Property under 28
12 U.S.C. § 1355(b).

13 5. Venue is proper in this district pursuant to 28 U.S.C. §1355(b)(1),
14 because the acts or omissions giving rise to the forfeiture occurred in this district.

15 **IV. BASIS FOR FORFEITURE**

16 6. Plaintiff repeats and realleges each and every allegation set forth in
17 Paragraphs 1 through 6 above.

18 7. The United States alleges that the Defendant Property is subject to
19 forfeiture to the United States because it is property constituting or derived from
20 proceeds traceable to a violation(s) of 18 U.S.C. § 1343 and 18 U.S.C. § 1344. As a
21 result of the foregoing, the Defendant Property is liable to condemnation and
22

1 forfeiture to the United States for its use, in accordance with the provisions of
2 pursuant to 18 U.S.C. § 981(a)(1)(C).

3 **V. FACTS**

4
5 1. In or around September 2019, Detective Adam Munro of the Moses Lake,
6 Washington Police Department began investigating potential fraud and embezzlement
7 against Experience Powersports (XPR) by a former employee. On or around March 10,
8 2020, United States Secret Service Special Agent Randolph Redder joined the
9 investigation at the request of Detective Munro.
10

11 2. Based on facts uncovered in the investigation, upon information and belief
12 XPR's former manager, Derek M. Smith, engaged in bank and wire fraud in order to
13 embezzle approximately \$898,387.35 from the company since 2016.
14

15 3. Based on facts uncovered in the investigation, upon information and belief
16 Derek Smith has a brother, Carson Smith, who was also working for XPR as the parts
17 manager. Based on information uncovered in the investigation, Carson Smith benefitted
18 from Derek's Smith alleged criminal actions by having his salary inflated above the
19 agreed amount with the owners of the business.
20
21

22 4. Derek Smith and Carson Smith were fired from their employment with
23 XPR on or about August 31, 2019.
24

25 **Forensic Accounting Report Findings**

26 5. Clifton Larson Allen LLP (CLA), a forensic accounting firm, was hired by
27 XPR to investigate the loss to the company and to establish the amount of money that
28

1 was embezzled by the suspect. CLA provided forensic accounting and investigative
2 services for XPR for the period of January 2016 through August 2019. CLA's report
3 states the following synopsis:

- 4 • On September 17, 2019, XPR engaged CLA to provide forensic
5 accounting and investigative services for XPR for the period of January
6 2016 through August 2019. The analysis performed by CLA was based on
7 discussions with XPR personnel and the review of XPR financial records
8 related to the alleged fraud discovered by XPR upon uncovering evidence
9 of missing company funds and financial misappropriation believed to have
10 been committed by former employees Derek Smith, general manager, and
11 Carson Smith, parts manager.
12
- 13 • The CLA report states that on August 31, 2019, XPR terminated Derek
14 Smith's and Carson Smith's employment with XPR. The alleged theft and
15 financial misappropriation was discovered by XPR prior to and after their
16 departure from the company. The initial discovery was made by an XPR
17 sales manager, through an internal review of financial activity and
18 disbursements. The sales managers noticed that the company's cash
19 balance in US Bank was lower than what he expected and discovered
20 several other anomalies related to sales and other financial transactions. IT
21 was discovered that the company's accounts payable were not being paid
22 on time, which caused a review of XPR's US Bank cash balance. Based
23 on time, which caused a review of XPR's US Bank cash balance. Based
24 on time, which caused a review of XPR's US Bank cash balance. Based
25 on time, which caused a review of XPR's US Bank cash balance. Based
26 on time, which caused a review of XPR's US Bank cash balance. Based
27 on time, which caused a review of XPR's US Bank cash balance. Based
28 on time, which caused a review of XPR's US Bank cash balance. Based

1 on an analysis of the sales activity, the sales manager concluded that based
2 upon the company's sales there should have been a significantly higher
3 cash balance in the bank and the bank account did not reflect all of the
4 sales revenue of the company.
5

- 6 • The CLA report further revealed Derek Smith was able to perpetrate the
7 alleged theft of funds schemes and financial misappropriation because he
8 was given the responsibility for overseeing the business affairs of XPR and
9 had access to the company's financial records. Derek Smith was
10 responsible for managing company funds and presenting financial
11 information to US Bank, floor financing lending companies, external
12 accountants, and the owners of the company. It has come to light that
13 Derek Smith sought to gain control over company financial resources by
14 falsely presenting himself as the owner of the company to the banks, floor
15 financing companies, and customers, as well as falsely designating himself
16 as a governor of the company with the Washington Secretary of State.
17
18 • Based on the work performed and information shared with CLA by XPR,
19 Derek Smith appears to have misappropriated XPR funds by methods
20 involving the following:
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22
23
24

- 25 a. Derek Smith caused payroll overpayments to both himself and
26 Carson Smith:
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- i. Purposely and without authorization increased the wages paid by XPR to Derek Smith above the agreed \$70,000.00/year (approximately \$2,692.30/bi-weekly);
 - ii. Purposely and without authorization increased the commissions paid by XPR to Derek Smith above the agreed \$15,000/year;
 - iii. Purposely and without authorization increased the commission paid by XPR to Carson Smith above the agreed \$8,500/year.
- b. Derek Smith directed payment of his personal American Express credit card bills with XPR company funds, which included purchases of materials and supplies for use at his personal residence, as well as purchases of personal travel and entertainment and other personal items.
- c. Without knowledge or consent of the owners, Derek Smith improperly redirected company cash receipts that should have been deposited into the company's US Bank account.
- d. Derek Smith failed to pay the warranty company for warranty coverage that customers had purchased, which resulted in customers believing they had warranty coverage when in fact the warranty

1 company never received the application or payment to activate the
2 warranty.

3 e. Without knowledge or consent of the owners, Derek Smith
4 borrowed funds from an employee on behalf of the company and
5 repaid the loan using company funds in excess of the original loan.
6

7 f. Derek Smith failed to file and pay sales tax to the state, resulting in
8 significant penalty and interest charges in addition to unpaid sales
9 tax.
10

11 6. CLA determined that XPR suffered a total estimated loss of \$898,387.35
12 related to the alleged theft and unauthorized actions committed by Derek Smith and
13 Carson Smith.
14

15 **Fraudulent Proceeds Obtained By Derek Smith**

16 7. Based on information received from the owner of XPR, Derek Smith's
17 job duties were limited to overseeing the employees and the outsourced bookkeeper,
18 managing the general operations of the business, depositing funds into the company's
19 bank account, and running the payroll for the company. Over time, Derek Smith was
20 trusted to take on additional responsibilities and eventually had control over the
21 company finances, which entailed direct communication with the outsourced
22 bookkeeper, direct access to the bank accounts and payroll, and control over all of the
23 company's financial operations. Derek Smith was authorized to issue himself typed
24 payroll and commission checks, but he was not authorized to inflate the amounts
25
26
27
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1 above the agreed upon salary of \$70,000 and agreed upon commission of \$15,000.

2 Further, Derek Smith was not authorized to write himself handwritten reimbursement
3 checks or other checks from XPR's accounts.

4
5 8. Records provided by XPR indicate the fraudulent proceeds were obtained
6 by Derek Smith through unauthorized checks Derek Smith caused to be issued by
7 XPR directly to himself. When issuing the checks to himself from XPR's account,
8 Derek Smith falsely alleged the checks were for payroll, reimbursements, and other
9 unknown payments.
10

11 9. Records provided by XPR indicate Derek Smith used interstate wires by
12 obtaining the fraudulent proceeds through the unauthorized payments from XPR's
13 company bank account to his personal American Express account via online payments
14 in the amount of \$110,695.59 and using online banking to move fraud proceeds from
15 his Horizon Credit Union and Wheatland Bank accounts.
16
17

18 10. Records provided by XPR indicate Derek Smith engaged in bank fraud
19 by obtaining moneys under the custody and control of US Bank on behalf of XPR
20 through false or fraudulent pretenses and representations through holding himself out
21 to be the owner of the company to the bank and issuing and signing checks from
22 XPR's US Bank account without authorization.
23

24
25 11. Records provided by XPR reveal the following fraudulent salary and
26 commission overpayments to Derek Smith:
27
28

- 1 a. During the year 2016, Derek Smith received \$66,954.31 in commissions,
2 which is \$51,954.31 more than the agreed upon amount of \$15,000.
- 3 b. During the year 2017, Derek Smith received \$124,941.92 in
4 commissions, which is \$109,941.92 more than the agreed upon amount
5 of \$15,000.
- 6 c. During the year 2018, Derek Smith received \$64,542.34 in commissions,
7 which is \$49,542.34 more than the agreed upon amount of \$15,000.
- 8 d. During the year 2018, Derek Smith received an overpayment of his base
9 salary in the amount of \$41,047.35.
- 10 e. During the year 2019 Derek Smith received \$35,429.51 in commissions,
11 which is \$20,429.51 more than the agreed upon amount of \$15,000 (it
12 should be noted Derek Smith was terminated from XPR on August 31,
13 2019).

14 12. The fraudulent proceeds were deposited into two bank accounts in the
15 name of Derek Smith: (a) Horizon Credit Union account ending 81037 in the name of
16 Derek M Smith and Danielle R Resendez; and (b) Wheatland Bank account ending
17 9376 in the name of Derek Smith.

18 13. Bank records obtained from Horizon Credit Union for Derek Smith and
19 Danielle Resendez account ending in 1037 for the years 2018 and 2019 indicate that in
20 2018 and 2019 Derek Smith caused at least 142 checks to be issued by XPR and
21 signed by Smith, many of them handwritten, which were deposited into Smith's
22

1 Horizon Credit Union account. The total amount of checks from XPR deposited into
2 Smith's Horizon bank account is at least \$262,368.50.

3 14. Bank records obtained from Wheatland Bank for Derek Smith account
4
5 ending in 9376 indicate that in April and May 2019, Derek Smith caused at least three
6 checks to be issued by XPR and signed by Smith, which were deposited into Smith's
7 Wheatland Bank account. The total amount of checks from XPR deposited into
8 Smith's Wheatland bank account is at least \$5,299.78.
9

10 15. Based on facts uncovered in the investigation and the records reviewed
11 by investigators, upon information and belief Derek Smith caused checks totaling
12 \$267,668.28 in 2018 and 2019 to be issued by XPR to him, which were signed and
13 deposited by him. Taking into account his agreed upon salary of \$70,000/year and
14 commissions of \$15,000/year for 2018 and two-thirds of 2019 (Derek Smith was fired
15 from XPR in August 2019) in the amount of approximately \$141,100, the total
16 amount of fraud proceeds obtained by Derek Smith represented in these transactions is
17 at least \$126,568.28.
18
19
20

21 The Defendant Property

22 16. Bank records indicate that the fraud proceeds obtained by Derek Smith
23 and deposited into his Horizon Credit Union and Wheatland Bank accounts were used
24 to pay the mortgage on his former residence located in Moses Lake, Washington.
25

26 17. The residence was sold on or about June 26, 2020 to a legitimate
27 purchaser. The Defendant Property was seized pursuant to a federal seizure warrant
28

1 issued on June 25, 2020, following the closing of the sale while it was held in escrow
2 by Stewart Title Company in Stewart Trust, Escrow File #:801297.

3 18. For the reasons explained below, the Defendant Property represents the
4
5 proceeds from the sale of Derek Smith's residence, and, therefore, is property
6 constituted or derived from proceeds of Derek Smith's fraud against XPR.

7 19. Records indicate that Derek Smith signed a contract to purchase his
8
9 residence in Moses Lake on or about April 24, 2017. Smith subsequently applied for
10 and was granted a home loan through GESA Credit Union / DMI. At the time of
11 purchase, Smith made a down payment from a Horizon Credit Union for \$8,286.08.
12

13 20. Records indicate that in 2018 and 2019, Smith made mortgage payments
14 via online banking on interstate wires totaling \$65,315.30 from Smith's Horizon Credit
15 Union account to his GESA home mortgage, which was during the period of his
16
17 fraudulent activities.

18 21. Records indicate that in May 2019, Smith made mortgage payments via
19
20 online banking on interstate wires totaling \$6,019.36 from Smith's Wheatland Bank
21 account to his GESA home mortgage, which was during the period of his fraudulent
22 activities.

23 22. Based on these facts and transactions, a total of \$71,334.66 in fraud
24
25 proceeds were used by Derek Smith to pay the mortgage on his residence.

26 23. Based on the foregoing, the Defendant Property, which represent Smith's
27
28 proceeds from the sale of the residence, is property traceable to Smith's illegal

1 activities and is property constituting or derived from wire fraud in violation of 18
2 U.S.C. § 1343 and bank fraud in violation of 18 U.S.C. § 1344. Consequently, the
3 Subject Property is subject to seizure and forfeiture pursuant to 18 U.S.C. §
4
5 981(a)(1)(A) and (C) and (b), and 28 U.S.C. § 2461.

6 **VI. CONCLUSION**

7 Based on the foregoing, the United States alleges that the Defendant Property is
8
9 subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), because
10 it constitutes proceeds or was derived from proceeds traceable to a violation(s) of 18
11 U.S.C. § 1343, Wire Fraud and 18 U.S.C. § 1344, Bank Fraud.

12
13 WHEREFORE, the United States of America requests that notice of this action
14 be given to all persons who reasonably appear to be potential claimants of interests in
15 the property; that the Defendant Property be forfeited and condemned to the United
16 States of America; that the plaintiff be awarded its costs and disbursements in this
17 action and for such other and further relief as this Court deems proper and just.

18
19 DATED this 21st day of January 2021.

20
21 William D. Hyslop
22 United States Attorney

23 s/ Brian M. Donovan
24 Brian M. Donovan
25 Assistant United States Attorney
26
27
28

VERIFICATION

I, Randolph Redder, hereby verify and declare under penalty of perjury that I am a Special Agent with the United States Secret Service, in Spokane, Washington, that I have read the foregoing Verified Complaint *in rem* and know the contents thereof, and that the matters contained in the Verified Complaint are true to my own knowledge, except that those matters herein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my knowledge and information and the grounds of my belief are the official files and records of the United States, information supplied to me by other law enforcement officers, as well as my investigation of this case, together with others, as a Special Agent.

I hereby verify and declare under penalty of perjury that the foregoing information is true and correct.

DATED this 21st day of January 2021.

Randolph Redder

Randolph Redder, Special Agent
United States Secret Service

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brian M. Donovan, United States Attorney's Office, P.O.
Box 1494, Spokane, WA 99210-1494, (509) 353-2767

DEFENDANTS

\$26,516.45 U.S. FUNDS

County of Residence of First Listed Defendant Grant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PRISONER PETITIONS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability LABOR <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. § 981(a)(1)(C).

Brief description of cause:
civil forfeiture for bank and wire fraud violations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

January 21, 2021

SIGNATURE OF ATTORNEY OF RECORD

BRIAN DONOVAN

Digitally signed by BRIAN DONOVAN
Date: 2021.01.21 14:34:17 -0800**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____